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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,573	12/31/2003	Chu Chau Huang	3413-P-15111	3106

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EXAMINER

COLE, LAURA C

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 05/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/751,573

Applicant(s)

HUANG, CHU CHAU

Examiner

Laura C. Cole

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 1-7 and 10-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wachtel, USPN 3,766,590 in view of Gueret, USPN 4,249,521.

Wachtel discloses the claimed invention including a massage structure (7) having a fastening portion extending radially inwards and made integrally in one piece (see Figures 1-2, the portion labeled "7a" appears to extend slightly inwardly), an orientation ring engaging tightly with the massage structure (9; see Figures), a circular pad (12) including a flange (the flange is the upper top edge portion of 12a that engages the radial inwardly disposed portion; see Column 2 Lines 35-38) and an L-shaped restriction portion extending downwardly therefrom a bottom of the circular pad (see portion that extends from "12" in Figure 1), the L-shaped restriction portion having a base extending radially therefrom to support the orientation ring (it is supported via the massage structure), and an exterior cover (4) retained against the orientation ring and the L-shaped restriction portion (see Figure 2), whereby the orientation ring engages the massage structure, the L-shaped restriction portion, and the exterior cover simultaneously for clamping the structure (see Figure 2). The orientation ring, circular pad, and cover are made of synthetic resin (Column 1 Line 64, Column 2 Lines 4-7, 21-23). The orientation ring has a clamping portion circularly protruding from an outer circumference (10), the cover has a clamping groove (6) so that the orientation ring

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engages tightly with the exterior cover (see detail of Figure 3). The clamping portion shrinks from a top to bottom thereof and includes a smooth surface (see Figure 1). The orientation ring includes a restriction surface (11) formed and protruding from an inner top thereof to engage with the fastening portion (see Figures 1-3). The cover further includes a step portion arranged on an inner side thereof (see Figure 2). The exterior cover includes a long handle (3) for manipulating. The pad is received in an inner space of the exterior cover (see Figures 2-3) and includes a restriction portion that has a base extending radially therefrom (see portion that extends from "12" in Figure 1) to engage an inner surface of the exterior cover (see Figure 2, the entire lower portion of the restriction portion is engaging an inner surface of the exterior cover). Also the massage structure has a fastening portion (portion near 7a) that is captured between the orientation ring and the pad (see Figures 2-3).

Gueret discloses a massaging brush that includes an integral massage structure (25) that has a fastening portion extending radially inwards and made integrally of one piece (the fastening portion is unlabeled, the horizontal flange portion of "25" near where reference numeral "25" is pointing as shown in Figure 3) and a circular pad (20) that includes an L-shaped restriction portion having a base extending radially therefrom (19) and a flange (18) that projects partially over the restriction portion to define a recess (see arrangement in Figure 3, "recess" is unlabeled), wherein the flange clamps the fastening portion of the massage structure received in the recess (see Figure 3).

It would have been obvious for one of ordinary skill in the art to modify the pad structure of Wachtel, to include a flange portion that defines a recess in order to clamp

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the massage structure, as Gueret teaches, in order to provide sufficient clamping structural means to have a more securely assembled massaging brush. Further, it would have been obvious for one of ordinary skill in the art at the time the invention was made to manufacture the orientation ring, circular pad, and exterior cover from polypropylene or polyvinyl chloride, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious engineering choice. In re Leshin, 125 USPQ 416.

2. Claims 8-9 and 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wachtel, USPN 3,766,590 and Gueret, USPN 4,249,21 as applied to claims 1 and 10 in view of Huang, USPN 6,547,750.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). For applications filed on or after November 29,

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1999, this rejection might also be overcome by showing that the subject matter of the reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. See MPEP § 706.02(I)(1) and § 706.02(I)(2).

Wachtel and Gueret disclose all elements above, however doesn't disclose a cover having a pinch portion extending from a top thereof.

Huang discloses a massage device wherein there is a cover (1) having a pinch portion (12) extending from a top thereof, the pinch portion having a curve body (see Figure 2), and a head (13) connecting the curve body (see Figures), and a user clamps the curve body with fingers and retains the head with the back of the hand (see Figure 6; Column 2 Lines 47-53). The pinch portion is disposed on an end of the top of the exterior cover (see Figures), and the head has a retention member extending forward from an opposite end thereof (see Figures). By having a pinch portion and retention member, the massage device can be held steadily so as to prevent the device from sliding.

It would have been obvious for one of ordinary skill in the art to modify the device of Wachtel and Gueret, so as to have a pinch portion, head portion, and retention member, as Huang teaches, so that the device can be held steadily without sliding.

### ***Applicants Arguments***

3. In the response filed 11 April 2005, the Applicant contends that:

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A. Wachtel does not disclose a retentive engagement between its rigid plate and bulging member pad. Wachtel et al. does not include a "flange projecting at least partially over...[the] restriction portion base to define a recess."

B. Neither Huang nor Gueret discloses the combination of retentive engagement features.

### ***Response to Arguments***

4. Applicant's argument A, filed 11 April 2005, with respect to Wachtel has been fully considered and is persuasive. The rejections made under 35 U.S.C. 102(b) of Wachtel have been withdrawn. It is noted however that between the rigid plate and pad of Wachtel, that there is a "retentive engagement" of friction between portions "7a" and "12a".

5. Applicant's argument B filed 11 April 2005 have been fully considered but they are not persuasive. Gueret does in fact include the "retentive engagement" structure including the L-shaped restriction portion and flange which define a recess that in turn clamp a radially extending fastening portion of a massage structure (see Paragraph 1 above).

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Cole whose telephone number is (571) 272-1272. The examiner can normally be reached on Monday-Thursday, 7:30am - 5pm, alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Kim can be reached on (571) 272-1142. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LCC

LCC  
24 May 2005



MARK SPISICH  
PRIMARY EXAMINER  
GROUP 3400

1700